IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1015 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
YUNUSKHAN VAHIDKHAN - Opponent(s)

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Appearance :
Ms.Darshana Pandit, APP for Appellant(s) : 1,
MR YOGESH S LAKHANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/12/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order passed by learned Special Judge and Additional Sessions Judge, Junagadh in Summary Case

No.40 of 1992 dated 8.6.1993 whereby the respondent was acquitted of the offence alleged against him under Section 7 read with Section 3 of Essential Commodities Act.

2. The prosecution case, in short, was that on 10.12.1991 at 10.40 hours when the auto rickshaw bearing No.GTH 1272 of the accused wsa passing in the area of Kalva Chowk of Junagadh City and having checked the same and upon testing the smoke coming out from the silencer of auto rickshaw, it was found that the accused was plying the same by mixing kerosene with petrol and, thereby committed the offence under Section 7 of the Essential Commodities Act. Accordingly a complaint came to be filed. After recording necessary evidence, learned trial Judge acquitted the respondent of the offences with which he was charged. It is against the aforesaid judgment and order the present appeal has been filed by the State.

3. Ms.Darshana Pandit, learned APP, appearing for the appellant submitted that the trial court has committed an error in holding that the panchnama is written in cyclostyled form Ms.Pandit submitted that as per the report of the Forensic Science Laboratory, kerosene was found from the muddamal article and therefore the impugned order is illegal and requires to be quashed and set aside.

4. Mr.Pravin Gondaliya for Mr.Lakhani, learned

Advocate for the respondent submitted that the panchnama was drawn on cyclostyled form and the trial court has not committed any error in passing the judgment and order in question. Mr.Gondaliya further submitted that even there is manipulation with the panchnama. Mr.Gondaliya submitted that in view of the aforesaid facts, this Court may dismiss the appeal.

5. The scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the

> evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

6. I have heard learned advocates for he respective parties. As a result of hearing and perusal of the record it is found from the record that the trial court has come to the conclusion that the panchnama is drawn on cyclostyled form. In fact the prosecution has failed to prove the case against the respondent and even in the present appeal the appellant is not able to point out any perversity or illegality in the order of the trial Court. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> “... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

7. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed.

(Sharad D.Dave,J)

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